THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.22089 of 1997

14.11.2007

Between:
M.V.R.K.Appa Rao, S/o.Late Raja VMG Appa Rao garu

…Petitioner

And

The Government of Andhra Pradesh, represented by its Secretary, Irrigation (Major Projects) Department, Secretariat Buildings, Hyderabad
And others

…Respondent

THE HON'BLE SRI JUSTICE V.V.S.RAO

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ORDER:

Petitioner is the son of late Raja V.M.G.Apparao of Nuzivid. When the Raja was alive, land admeasuring Acs.6.40 in survey Nos.450/1 (part) and 797/2 was notified under Nagarjuna Sagar Project Land Acquisition Act, 1956 (NSLA Act) for public purpose to wit… construction of Nuzivid Camp Colony under Nagarjuna Sagar (NS) Project. The notification was issued in 1980. Even before that, possession of land was taken on 26.1.1979 and the land was handed over to concerned Engineering department to construct colony by 1980. Nonetheless, award could not be passed as a result of which compensation was not paid. As an extent of Acs.1.70 was not utilized for construction of colony, on the request made by petitioner, said land was reconveyed to him and the Government continued in possession of Acs.4.70, but still compensation was not paid. Another notification under Section 4(1) of the Land Acquisition Act, 1894 (LA Act, for brevity) was issued vide G.O.Rt.No.51, dated 29.1.1987 in Krishna District Gazette and two local Newspapers, and the declaration under Section 6 of LA Act was published vide Memo No.2262, LAR(1)86-1, dated 29.1.1987. In spite of the same compensation was not paid for the land utilized by the Government for construction of the colony. Petitioner's efforts to claim and get compensation proved futile. It appears that there was talk of the Government demising the balance land acquired for other purpose. Petitioner therefore filed the instant writ petition challenging the declaration dated 29.1.1997 and also for a direction to respondents to pay the mesne profits and reconvey the

land.

A counter affidavit is filed before this Court admitting most of the petition averments. However the Land Acquisition Officer (LAO) who filed the counter affidavit denied the allegation that the land admeasuring Acs.1.05 is being demised to other departments or other persons. When the matter was heard by this Court on 07.3.2007, this Court directed respondents to file additional counter affidavit giving clarification with regard to various issues including the area which was taken possession, area which was utilized and the area which is now in possession of NS Project. In obedience thereof, LAO filed additional counter affidavit (sworn on 03.4.2007). In the additional counter affidavit it is admitted that the award has not been passed for an extent of Acs.3.65, which was utilized for construction of NS Project Camp Colony, that an extent of Acs.1.70 was reconveyed to petitioner on 20.5.1986, and that vacant land admeasuring Acs.1.05 is in possession of the Government. These particulars are not denied by petitioner by filing reply affidavit.

After hearing learned Counsel for the petitioner and learned Assistant Government Pleader for Land Acquisition, the question that requires for consideration is whether petitioner is entitled for a Mandamus directing respondents to reconvey the land admeasuring Acs.0.70 in survey Nos.450/1 (part) and 797/2. The incidental question is whether the petitioner is entitled to claim mesne profits in addition to the compensation as per the provisions of NSLA Act read with LA Act.

That when the land is acquired, owner of the land is not entitled to seek reconveyance of the land which remains unutilized is settled legal position in Indian Law. (see **Northern Indian Glass Industries v. Jaswant Singh**[1]).

Insofar as mesne profits is concerned, it is also well settled that when the land is acquired, owner of the land is entitled to the compensation as provided for under the law. Compensation includes the market value under Section 23(1) of LA Act, additional market value under Section 23(1-A) of LA Act and interest payable under Section 34 of LA Act read with provisions of NSLA Act. (Reference may be made to the decision of this Court in **K.P.Hussain Reddy v Executive Engineer, M.I.Division, Nandyal**[2]). Therefore, petitioner should not be entitled to claim reconveyance and also mesne profits for deprivation of enjoyment of the land.

Insofar as compensation payable is concerned, there is no dispute, and in the additional counter affidavit, it is stated as under.

It is respectfully submitted that the land to an extent of

> Acs.1.70 has been reconveyed to the petitioner by the Government and the land to an extent of Acs.0.35 has been mixed up with the adjacent land of the petitioner. The petitioner is claiming reconveyance for the land to an extent of Acs.0.70 which is in the possession of the Government. As there are catena of decisions by the Hon'ble Supreme Court and by this Hon'ble Court, the question of reconveyance of land to the petitioner does not arise. After publication of Draft Notification and Draft Declaration in the year 1987, further proceedings could not be taken up by the Respondents immediately, as N.S.P. Act was questioned before the Hon'ble Court. This respondent will obey the directions that may be issued by this Hon'ble Court in the above Writ Petition and pay compensation to the petitioner after passing Award.

Therefore this Court observes that in addition to the compensation that may be awarded by the LAO, petitioner would not be entitled for any further benefits like mesne profits. However, petitioner shall be entitled for additional market value at 12% per annum on the market value, from the date of taking possession of the land, under Section 23(1-A) of LA Act and also interest at 15% per annum as per the second proviso to Section 34 of LA Act. This Court also observes that as there is huge delay of more than three decades in passing the award, the LAO shall pass award immediately without waiting for further notification, within a period of three months from the date of receipt of a copy of this order. Petitioner shall be entitled for the costs as well as exemplary costs quantified at Rs.5,000/- (Rupees five thousand only).

The writ petition is accordingly allowed with costs.

(**V.V.S.RAO, J**)

November 14, 2007
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[1] (2003) 1 SCC 335
[2] 2003(1) ALD 435